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ELIZABETH ROSALIA WOODS

Passenger

IMMIGRATION & NATURALIZATION SERVICE

Department of Justice

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1965

No. _____

ELIZABETH ROSALIA WOODBY,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

ELIZABETH ROSALIA WOODBY prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is set forth in Appendix A, *infra*, being case No. 15637, was decided on September 16, 1965 and is unreported at this time.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on September 16, 1965.

The jurisdiction of this Court is invoked under 28 USC 1254.

QUESTION PRESENTED

The Petitioner, ELIZABETH ROSALIA WOODBY, was charged with engaging in prostitution after entry into the United States. A hearing was held before a special inquiry officer of the Immigration and Naturalization Service, who found on October 30, 1962 that the Petitioner was subject to deportation and ordered her deported. The Petitioner admitted having engaged in acts of prostitution only for two months, but as a defense stated that she was acting under duress, and therefore should not be subject to deportation. Upon appeal to the Board of Immigration Appeals in a decision dated March 8, 1963, the decision of the special inquiry officer was sustained. A motion to reconsider the decision of the Board of Immigration Appeals was denied in a decision dated May 27, 1963. The decision of the United States Court of Appeals for the Sixth Circuit affirmed the decisions of the special inquiry officer and also of the Board of Immigration Appeals and in a decision dated September 16, 1965 the court found that the previous decisions were supported by "reasonable, substantial and probative evidence on the record considered as a whole."

The questions presented in this case are:

I. Were the decisions of the Board of Immigration Appeals and also of the special inquiry officer supported by "reasonable, substantial and probative evidence on the record considered as a whole"; and

II. Did the United States Court of Appeals for the Sixth Circuit commit error by not returning the case to the Immigration Service to adduce additional evidence as provided in 5 U.S.C. 1037-c.

STATEMENT OF FACTS

The Petitioner is a 30 year old female, who married an American soldier in Germany while he was stationed there. She gave birth to one child in Germany, and remained there for more than a year after her husband returned to the United States. She arrived in the United States in February of 1956, and she, her husband and their daughter lived with her husband's parents in Harlan, Kentucky. A few months later they moved to Dayton, Ohio, where her son was born prematurely on August 13, 1956 (H. R. 25). At that time the Petitioner, her husband and daughter lived at 528 Notre Dame, Dayton, Ohio, and lived at that address for approximately four months after the birth of the child (H. R. 26), this would have been approximately January 1, 1957. At that time the Petitioner's husband virtually forced her to go to Pennsylvania to visit a friend. She returned the next day to find that her husband had taken the children and had moved to Kentucky. She had no funds to follow him and later employed counsel to get the children back (H. R. 27). The Petitioner went to work at McCrory's 5 & 10¢ store, and worked there approximately three months (H. R. 29). This would place the time at approximately April 1, 1957. The Petitioner then went to work at Neil's Restaurant, and at the same time had moved her residence to Summit Court (H. R. 29). The Petitioner received a telephone call from her husband, who was in Kentucky, stating that he needed \$300 at once for an operation for the baby. The baby was supposed to be in the hospital and the husband did not have any insurance or Blue Cross to pay the hospital, and they were not going to perform the operation unless they were paid the \$300 in advance (H. R. 29), and she believed that the child would die if the operation were not performed.

The next day a vacuum cleaner salesman, by the name of Tom Walley, came to the door to sell the Petitioner a vac-

uum cleaner, and she told him the story. He told her that he could help her get the money, since she knew no one else from whom she could borrow the money. He left the apartment and returned with a bottle of whiskey and another man. He took some pictures of her, and it appears that men started coming to the apartment the next day (H. R. 7). These arrangements continued for approximately two months, until the Petitioner had repaid the \$300 which she needed for the operation for her son (H. R. 8). When the Petitioner attempted to cease the arrangement which she had, she was threatened by Walley with being reported to the immigration authorities and the police (H. R. 14 & 15). Even facing these threats of blackmail, the Petitioner terminated this relationship with Mr. Walley, and moved to Knoxville, Tennessee to get away from Walley and remained there until July 4, 1957 (H. R. 34). A Mrs. Jackson, a friend of petitioner, drove to Knoxville, to pick up the Petitioner and brought her back to Dayton, Ohio, where the Petitioner lived with Mrs. Jackson on Rugby Road. They lived there from July 4th, 1957 until some time in September, 1957, when they moved to 1500 W. Riverview, above Neil's Restaurant, where the Petitioner was working (H. R. 40). Mr. Amicon met the Petitioner at Neil's Restaurant in October, 1957 where she was working (H. R. 18). Mr. Amicon was introduced at the restaurant to the Petitioner as an alleged prostitute, but he found that she was not, and that she had ceased all such actions after she had repaid the money which was needed for her son's operation. Amicon testified that he was willing to marry the Petitioner (H. R. 20). Certainly, he would not propose marriage if he did not believe her story. (The Petitioner has been a widow since July 14, 1957, when her husband was killed in an automobile accident.)

The Special Inquiry Officer made a finding of fact which was not supported by the record, in this case. On Page 5 of

his decision, it is stated that Mr. Amicon stated that he met the Petitioner in October of 1957. As a result of this meeting, the Hearing Officer erroneously found that the Petitioner had been practicing prostitution from April 1957 to September, 1957, or for approximately six months. In the record of the proceeding it is stated that the Petitioner went to Knoxville, Tennessee for several months and remained there until July 4, 1957, and that she lived with a Mrs. Jackson, first on Rugby Road and then moved to above Neil's Restaurant in September of 1957. The Petitioner met Mr. Amicon about one month later, as aforesaid. She stated in the record that she ceased practicing prostitution prior to her leaving for Knoxville, Tennessee. The entire time sequence is erroneously stated in the decision.

The decision of the Board of Immigration Appeals again contains partially the same confusion of dates as those contained in the finding of the Special Inquiry Officer. In their finding it was stated that it was not clear from the testimony, whether the Petitioner terminated her acts of prostitution in 1957 or 1958. It is clear, under the facts, that the Petitioner terminated her acts of prostitution in approximately June of 1957 and, therefore, the finding that she committed acts of prostitution after that date is clearly erroneous. The correct time sequence is as follows:

(1) The Petitioner began the practice of prostitution approximately April 1, 1957 and engaged therein for approximately two months (H. R. 8).

(2) The Petitioner traveled to Knoxville and returned therefrom on July 4, 1957 (H. R. 34).

(3) The Petitioner lived with Mrs. Jackson, first on Rugby Road and then at 1500 W. Riverview, above Neil's Restaurant from July 4, 1957, until October of 1957 when she met Mr. Amicon (H. R. 18 & 40).

If the Hearing Officer and the Board of Immigration Appeals had followed this time sequence they would have

found that the Petitioner was acting under duress while she engaged in acts of prostitution. The Petitioner left town on June 1, 1957 to get away from Mr. Walley and returned to Dayton on July 4, 1957 and never engaged in acts of prostitution thereafter.

REASONS FOR GRANTING WRIT

I. WERE THE DECISIONS OF THE BOARD OF IMMIGRATION APPEALS AND ALSO OF THE SPECIAL INQUIRY OFFICER SUPPORTED BY "REASONABLE, SUBSTANTIAL AND PROBATIVE EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE," WHEN THEY FOUND THAT THE PETITIONER WAS NOT ACTING UNDER DURESS WHEN SHE ENGAGED IN ACTS OF PROSTITUTION, FOR WHICH ACTS SHE WAS FOUND DEPORTABLE.

The Defense in this case is one of duress—if any acts were committed or performed by the Respondent, she did so under duress and is therefore not legally responsible for them under the law.

The Respondent began practicing prostitution in approximately April of 1957, when she was informed by her husband that her son had a head injury, was in the hospital and needed an operation, but that he was not going to have this operation if the sum of \$300.00 was not first paid to the hospital and/or the Doctor. Respondent believed that if the operation were not performed, the child would die. The boy had been a premature baby and had been in the hospital approximately four months after his birth, and this phone call from the Respondent's husband came approximately four months after the child's release from the hospital. The father of the boy had no job, and, of course, was making no effort to procure the money which was needed. The father's character is portrayed quite vividly in the one incident where, after an argument, he placed the Respondent on a bus with \$10.00 to go to Pennsylvania to visit a

friend, and then took the children to his parents' house in Harlan, Kentucky (H. R. 27).

When the Respondent received the phone call concerning the need for her son's operation, she was put in fear for the health and life of her son. She knew that the child would not get the operation if she did not provide the money for it. Not only was her husband not working, but her in-laws had no money either.

The next day a vacuum cleaner salesman came to the door to sell the petitioner a vacuum cleaner and she told him the story. He informed her that he could get her the money and left the apartment and returned with a bottle of whiskey and another man. He induced her to begin practicing prostitution in order to raise the Three Hundred Dollars (\$300.00) she needed for her son's operation. The petitioner ceased all acts of prostitution after she had repaid this sum of money to the lender under threats of blackmail.

The question involved in this case is: "Were these acts of prostitution which were performed by the petitioner performed under duress, or not?" It is our contention that they were performed under duress and are therefore legally excusable. Most cases which involve the excusability of an act because of duress are based upon duress because of fear of injury directly to the moving party. In this case the fear of injury was not to the petitioner herself, but to a third party, to wit: her son. This question is well stated in 40 A.L.R.2d, at Page 917 where it states as follows:

"Although there is only sparse authority on the question whether fear based on threats or injury to others is sufficient to constitute the defense of coercion, it would appear that the determination of such questions depends upon such factors as the relationship between accused and the person threatened or injured, the communication of such threats or injury to accused, etc. The few cases in point

exhibit varying results in view of the individual facts, and circumstances shown.

Thus, where defendant, charged with treason in having aided the Japanese during the war by working for them as a radio script writer and broadcaster, assigned as error the court's refusal to admit additional evidence of duress on others, the state of fear under which the entire broadcasting staff of Radio Tokyo worked and the atrocities committed upon American prisoners of war, it was held in *Iva Ikuko Toguri O'Aquino v. United States* (1951, CA 9th Cal.), 192 F 2d 338, reh den 203 F 2d 390, cert den 343 U.S. 935, reh den 343 U.S. 958, reh den 345 U.S. 931, that no error was committed on rejecting such additional evidence of atrocities and related matters, since it was within the discretion of the trial court in passing upon its admissibility to hold that in order that it be relevant as bearing upon accused's state of mind, and upon the question of her reasonable grounds for apprehension of death or serious bodily injury, that it must have been communicated to her."

The argument in this case is not if the petitioner did or did not act rationally under this set of circumstances, because, what is the rational act of a mother who is in fear that her child might not live if she does not have Three Hundred Dollars (\$300.00) for an operation for her son.

The Federal Courts have in certain cases, involving citizenship and deportation, set forth certain standards and definitions for duress.

In the case of *Insogna v. Dulles*, 116 F. Sup. 473, (1953), the Plaintiff brought an action under the Nationality Act for a declaratory judgment to establish that she was a citizen of the United States and that there had been no expatriation or abandonment of citizenship by her because of the fact that she had accepted governmental employment in Italy. Plaintiff's testimony was that just prior to World War II she had worked as a domestic to support

her Mother and sister; that with the advent of the War, the economy of the small village was so upset that she was unable to find work and that when she sought relief from the Mayor of the village she was told that the village had no money but that she was offered a job working for the government.

The Court stated at Page 475: "There is no legal requirement that this testimony be corroborated by documentary or other proof. *Pandolfo v. Atcheson*, 2 Cir. 1953, 202 F 2nd 38. Thus, in the absence of any showing to the contrary, the Court is of the opinion that the circumstances are such as to justify a finding that the Plaintiff took the job in order to subsist. Self preservation has long been recognized as the first law of nature. In addition, common knowledge of the economic conditions and fears prevailing in a country at war lends credence to the Plaintiff's testimony. The circumstances of the acceptance of employment by Plaintiff justifiably form a basis for the finding of fact, now made by the Court, that same was involuntary and based on duress. "The means of exercising duress is not limited to guns, clubs, or physical threats." *Nakashima v. Atcheson*, DC Cal. 1951, 98 F. Sup. 11; 13. *CF. Mendelsohn v. Dulles*, *supra*; *Ryckman v. Atcheson*, DC Texas 1952, 106 F. Sup. 739, *Schioler v. United States*, DC 111, 1948, 75 F. Sup. 353."

In the case of *Schioler v. United States*, 75 F. Sup. 353, (1948), the Plaintiff brought an action against the United States for declaratory judgment declaring that she was a citizen of the United States and that she never lost her citizenship by reason of she and her husband's petition for Danish citizenship and by reason of her having traveled to the United States on a Danish passport. The Plaintiff, her husband, and their two children, were in Denmark when the Second World War broke out and they were apprehensive for their own safety and that of their children.

They were advised by Danish officials to ask for Danish citizenship because they felt it would be a protection to them and their children.

The Court states at Page 355; "The Court believes that American citizenship is a priceless heritage involving not only privileges but duties and responsibilities, and that among these duties and responsibilities are primarily loyalty and allegiance to the United States. *However, in considering this case, the court also recognized that self preservation is nature's first law and that it is quite natural for mothers and fathers to seek in every way to preserve the lives of their children when their safety is threatened.* (Emphasis added.) When an American citizen finds himself and his family as Paul Schioler did, in the theater of war, their safety threatened, facing the gravest of dangers, even possible death or internment, and in this extremity, on the advice of officials of a foreign state where he happens to be, makes application for foreign citizenship in an effort to preserve the lives and safety of his family, his wife joining in the application, I am of the opinion that under such circumstances the joinder of the wife is not such a voluntary renunciation or abandonment of her nationality as to forfeit her American born citizenship.

I therefore conclude, after a careful consideration of all of the facts in this case, that Petitioner, by joinder in her husband's application did not lose her native born United States citizenship, and that she remains a citizen of the United States and entitled to all the rights and privileges of such United States citizenship and I so hold."

In the case of *Nakashima v. Atcheson*, 98 F. Sup. 11, (1951), the Plaintiff brought an action against the Secretary of State for declaratory judgment declaring her to be a national of the United States. The Plaintiff in the year 1946 voted in a Japanese political election, which was the first in which women were permitted to vote. The occupa-

tion authorities were bringing intense pressure on the Japanese people in an effort to induce them to participate in the democratic process and to exercise their right of suffrage. The testimony of the Plaintiff disclosed that she had the fixed purpose of returning to this country at the first opportunity and was fearful of any interference with her plans and thought that if she did not vote in the election she would displease the occupational authorities and might encounter some difficulty in returning to the United States as a result of not voting.

The Court stated at Page 13: "*The means of exercising duress is not limited to guns, clubs, or physical threats. The fear of loss of access to one's country, like the fear of loss of a loved one, can be more coercive than the fear of physical violence. The Plaintiff's act of voting was not of her own choice, it was impelled by the influence of those who stood in position of authority and was not a voluntary act.*" In view of this finding the court held that the Plaintiff did not lose her American citizenship by voting in the election. (Emphasis added.)

In the case of *Mendelsohn v. Dulles*, 207 F 2nd 37, (1953) Plaintiff further brought an action for declaratory judgment to be declared a national of the United States on the ground that he had voluntarily resided in a foreign country for more than five years due to financial inability to buy passage and because of his wife's illness. The Court stated at Page 39: "The Secretary thus presses upon us the adoption of a Spartan standard by which to determine whether the appellant acted voluntarily. He says that Mendelsohn could have embarked for America, turning away from the sick bed and leaving his wife to the care of others while he traveled thousands of miles to retain his nationality. It was indeed physically impossible, and the appellant could have done it if he could have overcome those natural impulses which imperatively require a hus-

band's continued presence with his wife who lies seriously ill. *The Secretary's argument disregards the duress of devotion.* (Emphasis ours.) Mendelsohn acted, it seems to us, under the corrosion of marital affection, which was just as compelling as physical restraint." The case at bar is one of the duress of devotion.

In the case of *Ryckman v. Atcheson*, 106 F. Sup. 739, (1952) the Plaintiff brought an action to obtain a declaratory judgment that she was a national of the United States. The Plaintiff had returned to Canada for periods of time in order that she might take care of her mother who was then 78 years of age and in poor health. The Court stated, when attempting to determine if the Plaintiff's stay in Canada was voluntary or not, at Page 741, quoting the case of *Nakashima v. Atcheson*, 98 F. Sup. 11, (1951) a voluntary act is defined as "an act proceeding from one's own choice or full consent unimpelled by another's influence." *The Court further stated at page 741; that the fear of the loss of a loved one who was not physically able to care for herself and who had no one in the world to care for or stay with her, was in effect duress.* (Emphasis ours.)

In the case of *Rex v. Steane* (1947), K.B. 997 (1947), 1 ALL ENG 813-cca, it was held that the conviction of the Defendant for doing acts likely to assist the enemy and with intent to do so, namely, radio broadcasting in Germany, during the War, could not stand, not only because the criminal intent had not been proved, but also because the trial court in summing up had failed to remind the jury of the various threats made by the Germans that Defendant's wife and children would be put in a concentration camp if he did not obey, and that there were methods of making people do things as well as beatings to which Defendant swore he would have been exposed, since the prisoners defense must be fully put to the jury.

The case at Bar is similar in facts to the case of *Schioler v. United States, supra*, in that case the Court recognized that self preservation is nature's first law and it is quite natural for mothers and fathers to seek in every way to preserve the lives of their children when their safety is threatened. This is what happened in the case at Bar. The Petitioner's every act was performed in order to save what she thought was the life of her child. If there was any fraud perpetrated, it was perpetrated by the Petitioner's husband when he told her about the need for the child's operation. The relationship between husband and wife has always been one of the utmost confidence, and certainly the Petitioner had every right to believe what her husband told her about her child, who was already sick. She felt that the life of her child was so important to her that she was willing to sell herself to save him.

There are many other cases which give the definition of duress, but the only one which used duress as a defense for an order of deportation for the reason that the immigrant had allegedly engaged in prostitution was *In the Matter of M-*, 7 IN 251 (I.D. 804, 1926), where an order of deportation was ordered by special inquiry officer finding that the immigrant had engaged in prostitution in violation of Section 241 (a) (1) of the Act of 1952.

"While working at Magdalena, Sonora, Mexico as a waitress, she was induced by two women to go to Naco, Sonora, Mexico, on the promises that she would be given employment there as a waitress for higher wages than she was then receiving. She had not reached the age of eighteen years, but nevertheless was taken to a house of prostitution and told that she was to work as a prostitute and not as a waitress. She testified that she protested but was told that she owed them one thousand pesos for the expenses in bringing her from Magdalena to Naco, Sonora, Mexico,

and that she would have to repay this money before she could be released. She further testified that she attempted to escape from this house of prostitution on several occasions but was always located and forced to return to a house of prostitution in order to pay the money she owed. She finally met the man who is now her husband and claims that she has never since had illicit relations with any man. Respondent presented several letters attesting to her good moral character and her conduct since she has been married to her present husband. The special inquiry officer stated for the record that he believed that the respondent has testified truthfully and in all sincerity with regard to her experiences as a prostitute.

We have certainly considered all the evidence of record. The respondent has testified that she engaged in the practice of prostitution for a period of less than a year. There is always a showing that the respondent was indebted to the operator of the bawdy house to the extent of one thousand pesos and that she did not earn enough to pay for her meals, much less pay the debt. There was also a showing that at the first opportunity respondent, upon the assurance of security through marriage fled those who had led her astray.

We are of the same opinion as the special inquiry officer that respondent has testified truthfully. *As a matter of law she is not excludable as a prostitute under section 122 (a) (12) of the Immigration and Nationality Act of 1952, because those to whom respondent was indebted reduced her to such a state of mind that she was actually prevented from exercising her free will through the use of wrongful, apprisive threats or unlawful means.* (See *Weisert v. Bramman*, 318 MO 636, 216 SW 2nd 430 (1948); *Walk-A-Show v. Stanton*, 182 MD 405, 35 A 2nd 121 (1943); *Southern Railway Company v. Stewart*, 115 F 2nd 317 (CCA 8, 1940). (Emphasis added.)

We had had occasion in the past to consider facts similar to those presented to the instant case and held that prostitution committed under duress would not support a charge laid under section 241 (a) (1) of the Immigration and Nationality Act. See *Matter of R-H*, A-1050 7646, BIA, December 28th, 1955, unreported. Accordingly we find the charges in the warrant of arrest not sustained. The proceedings will determinate it.

The respondent stated that she had been forced to practice prostitution and that her fall from grace was brought about by fraud, deceit, duress, and coercion practiced upon her and that she was unable to escape from this immoral life."

In the case *Weisert v. Bramman*, 358 MO 636, 216 SW 2nd 430 (1948), duress was alleged by the Plaintiff when she executed a certain agreement with the Defendants. The Court stated "the modern rule of duress as established by the above cases is that 'duress' is to be tested, not by the nature of the threats, but rather by the state of mind induced hereby in the victim"; and that "the ultimate fact in issue is whether the alleged injured party was bereft of the free exercise of his willpower; and of which, the means used to produce such state of mind, the age, sex, capacity, situation, and relation of the parties, are all evidentiary." *Coleman v. Crescent Insulated Wire and Cable Company*, 350 MO 781, 168 SW 2nd, 1060, 1066. However, it is also the general rule that a claim of duress cannot be sustained where there is full knowledge of the facts of the situation and ample time and opportunity for full and free investigation, deliberation and reflection. . . .

In the case of *Walk-A-Show, Inc. v. Stanton*, 182 MD 405, 35 A 2nd 121 (1943), the Court stated when confronted with the statement that a payment had been made to the city of Baltimore under duress, "duress is a condition of mind produced by improper external pressure or

influence that practically destroys the free agency of the party against whom it is brought."

The Court in the *Southern Railway Company v. Stewart*, 115 F 2nd 317 (1940), at Page 321 stated: "There is no legal standard of resistance with which the victim must comply at the peril of being remediless for a wrong done, and no general rule as to the sufficiency of facts to produce duress. The question in each case is whether the person so acted upon, by threats of the person claiming the benefit of the contract, was bereft of the quality of mind essential to the making of a contract, and whether the contract was thereby obtained. In other words, duress is not to be tested by the character of the threats, but rather by the effect produced thereby on the mind of the victim. The means used, the age, sex, state of health and mental characteristics of the victim are all evidentiary, but the ultimate fact and issue is whether such person was bereft of the free exercise of his willpower.

The trend of modern authority is to the effect that a contract obtained by so oppressing a person by threats as to deprive him of his free exercise of his will may be voided on the ground of duress. What constitutes duress is a matter of law, whether duress exist in a particular transaction is usually a matter of fact."

The case of *Cooper, et al. v. Cooper*, 69 SO 2nd 881 (1954), was decided by the Supreme Court of Florida where an action was brought by a former wife against her former husband to set aside a certain deed which the wife had allegedly signed under duress. The Court stated at Page 883, while giving the definition of duress, "As was said in the last cited case *duress is a condition of the mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him to do and act or make a contract not of his own volition.*" (Emphasis added.)

In the case of *Newsom v. Medis*, 205 OKL. 574, 239 P 2nd 784 (1951), the Plaintiff brought an action against the Defendant for actual damages and punitive damages for duress in the signing of a contract. The Court stated at Page 786, "*Duress exists when one, by an unlawful act of another, is induced to make a contract or perform some act under circumstances which deprive him of the exercise of his free will.*" (Emphasis added.)

"In that case we also said, to deprive one of his will and understanding by reason of threats or other unlawful means, so that a note thus obtained is not his free and voluntary act, constitutes duress."

In the case of *Cappy's Inc. v. Dorgan, et al.*, 313 Mass. 170, 46 NE 2 538, the Court stated at Page 540 when considering whether there was duress or not: "It is settled that a person whose will and judgment are overcome by threats, fear or some other influence, and who is thereby compelled to execute a contract that he would not have made in the free exercise of his will and independent judgment, may avoid the contract on the ground of duress."

Based on the law and the facts in this case, it is clear that the Petitioner was acting under duress at the time she engaged in the acts of prostitution. The decisions of the special inquiry officer and the Board of Immigration Appeals were not therefore supported by reasonable, substantial, and probative evidence on the record considered as a whole, and the Court of Appeals should have found for the Petitioner finding that she was not subject to deportation.

II. DID THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT COMMIT ERROR BY NOT RETURNING THIS CASE TO THE UNITED STATES DEPARTMENT OF JUSTICE, DIVISION OF IMMIGRATION SERVICE TO ADDUCE ADDITIONAL EVIDENCE AS REQUESTED IN THE PRAYER FOR RELIEF IN THE BRIEF FILED BY

**THE PETITIONER IN THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT
IN THIS CAUSE.**

There were many discrepancies in the times, dates and places in this case which were understandable for the reason that the acts of prostitution took place early in 1957 and yet the hearing before the Special Inquiry Officer was held on March 28, 1962, approximately 5 years later. Because of the time span, much confusion was caused by pinpointing exact times and places and yet this entire case has resolved itself around the exact time that these acts of prostitution took place. The confusion of times and places and the lack of facts is substantiated in the decision of the Court of Appeals when they stated, "Even if it were our function to appraise the harshness of the deportation of this petitioner, we do not have sufficient facts before us upon which to form our own judgment thereon."

Title 5, U.S.C. 1037 (c) *provides that a Court of Appeals may order additional evidence taken in a case such as this, and that a Certified Transcript of such additional evidence and modified or new findings shall be filed with the Court of Appeals. In the case at bar the Court of Appeals did not even act on this request by the Petitioner even though the facts as alleged by the Petitioner did constitute a complete defense to a deportation order. Since the only evidence contained in the record which was used to find the Petitioner deportable, was the testimony of the Petitioner alone, we take the position that it was incumbent upon the Court of Appeals to order additional evidence taken to clear up the discrepancies in times, dates, places and facts as contained in the record in this case.*

There is neither a showing in the record or any other place that the respondent had ever practiced prostitution prior to the 2 month period during which she concedes practicing prostitution, nor, is there any showing that she had

committed any acts of prostitution subsequent to this 2 month period.

CONCLUSION

The Petitioner entered the practice of prostitution for one purpose and for one purpose only, to obtain money so that her child could have an operation which she had been told, by her husband, was necessary, and which she believed was necessary to save the child's life, and when she raised the necessary funds to save the child's life, she quit.

When considering the confidential trust relationship between the Petitioner and her husband, she believed what her husband told her about her son needing an operation to be true.

As a result of this belief that her son needed such an operation, and because she was destitute, she was reduced to such a state of mind and physical condition that it is apparent that she was not acting under a free will in order to choose, as a rational person would, what her acts were, and were going to be, but rather, she was acting under duress. It is clear that these acts which the Petitioner performed were performed as a result of duress, and therefore, under the aforementioned cases, she is not legally and/or morally responsible for her acts.

There is neither a showing in the record, nor in any other place, that the Respondent had ever practiced prostitution, or had committed any immoral acts prior to this two month period, and subsequent to this two month period.

The testimony shows that the Petitioner is highly regarded by the other witnesses at the hearing, and each of them testified that she had not practiced prostitution subsequent to the Spring of 1957. There is nothing in the record which would indicate that the Petitioner's testimony is not completely true.

The relief prayed for in the Court of Appeals was, to reverse the findings of the Board of Immigration Appeals and the finding of the Special Inquiry Officer and terminate the deportation proceedings pending against the Petitioner, or in the alternative to remand the case to the Department of Justice for the taking of further evidence.

The Court of Appeals refused to reverse and in fact sustained the findings of the Board of Immigration Appeals and the finding of the Special Inquiry Officer. *However, it never acted, neither affirmatively nor negatively upon the request that the case be remanded to the Department of Justice for the taking of further evidence as it had the duty to do under Title 5, U.S.C. 1037 (C).*

We respectfully submit therefore that the Petition for Writ of Certiorari be granted in this case.

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